

REMARKS/ARGUMENTS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe the subject matter which applicant regards as the invention.

The Examiner has required a brief description of the drawing. Applicant directs the Examiner's attention to the description of the last paragraph of page 3 in which the single drawing figure is briefly described. Further, Applicant has added section headings by amendment herein to more clearly delimit the required sections of the specification.

Claim 19 was rejected under 35 U.S.C. 112, second paragraph, for lack of antecedent basis. The claim has been amended appropriately to remove the rejection.

Claims 1-3, 5-14, and 16-20 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,359,992 to Preves. The rejection is respectfully traversed for the following reasons.

Regarding claim 1, Preves does not teach "that a level of the input signal is determined and that the threshold value (O_{\max} , O_{\min} , O_{TR}) is set as a function of the level of the input signal," as required. The Examiner states that Preves discloses a threshold value being adjustable as a function of the input signal level, citing the circuit of Fig. 3 for this teaching. Applicant respectfully disagrees.

Preves does not discuss adjusting the threshold level; Preves merely compares the input to a preset threshold (see column 5, lines 19-21). More importantly, Preves does not say anything about the threshold being a function of the input level. Again, it merely says the threshold is

"preset". There is an adjustable threshold in the preamplifier, but this relates to separating noise from other sounds and is not used to limit the output signal (see column 5, lines 51-63).

Referring to Fig. 4, however, Preves mentions that the reference voltage representing the threshold can be variable (see, column 6, lines 39-45). Nonetheless, Preves does not state that the reference voltage is variable as a function of the input signal.

In contrast to the presently claimed invention, Preves is primarily concerned with determining a noise level. Once the noise level is determined it is compared to a preset threshold to possibly limit the output signal. Although the threshold is variable, it is not set as a function of the level of the input signal.

Since every limitation of the claim is not taught by the reference, claim 1 and its dependent claims 2-3, 5-14, and 16-20 are patentable over Preves.

Claims 4 and 15 are rejected under 35 U.S.C. 103(a) as being obvious over Preves. For the following reasons, the rejection is respectfully traversed.

Since claims 4 and 15 depend from claim 1, they are patentable for the reasons explained above. There is nothing Preves that suggests modifying its teachings to include the missing limitations.

Further, regarding claims 4 and 15, the Examiner states that "Preves et al does not disclose a specific averaging function." The Examiner contends that, since the formula for calculating the averaging signal is well known, it would be obvious to modify the teachings of Preves to include the missing limitations. Initially, it is respectfully requested that if the Examiner intends to maintain this rejection, that support for this assertion be provided, such as a reference which discloses the claimed formula. Further, the Examiner is respectfully reminded

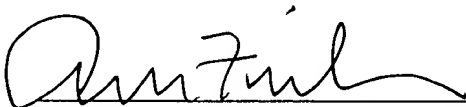
that "the mere fact that [a reference] can be [] modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)" (see MPEP § 2143.01). The fact that the calculation of averaging signals is well known does not replace the presence of an actual suggestion or motivation in the prior art to make the proposed modification. There is nothing in the disclosure of Preves that would suggest modifying its teachings to calculate a mean level based on the claimed formula.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 33868.

Respectfully submitted,

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